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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

8 ERIE ST. JC LLC

Civil Action No.

Plaintiff,

v.

**CITY OF JERSEY CITY, JERSEY CITY
COUNCIL, and JERSEY CITY
PLANNING BOARD and JERSEY CITY
REDEVELOPMENT AGENCY,**

Defendants.

COMPLAINT AND

DEMAND FOR JURY TRIAL

Plaintiff 8 Erie St. JC LLC (“Plaintiff”) complains and alleges as follows against Defendants City of Jersey City (“City”), Jersey City Council (“Council”), Jersey City Planning Board (“Board”), and Jersey City Redevelopment Agency (“JCRA”) (collectively, “Defendants”):

THE NATURE OF THE ACTION

1. Faced with a neighborhood repeatedly declared to be blighted and in need of redevelopment, the City recognized an urgent need to recruit capital investment, and created redevelopment plans to entice developers to commit resources for the revitalization of properties falling into disrepair. Plaintiff heeded the City’s call and submitted the winning bid to redevelop the area located at 8 Erie Street, Jersey City, New Jersey, known as City Block 11403, Lot 29 (formerly Block 242, Lot 20A) on the Tax Map for the City of Jersey City (the “Property”). The redevelopment included renovation of the deteriorating century-old police station into sixteen

modern lofts and multiple spaces for retail and restaurants. As set forth in detail below, in entering the Redevelopment Agreement, Plaintiff was induced to commit years of effort and nearly \$10 million in expenses rehabilitating the Property and improving the area. In exchange, the City promised that, if successful, Plaintiff had the opportunity to benefit from its efforts by leasing at fair market rates based on demand, including to major commercial tenants. But after the parties entered into the Redevelopment Agreement, and Plaintiff and the City put their commitments in writing, Mayor Steven M. Fulop (the “Mayor” or “Fulop”) engaged in a blatantly illegal scheme to change the terms of the deal purely for his own political benefit. In what amounts to a flagrant bait-and-switch, in violation of Plaintiff’s rights, the City persuaded Plaintiff to accept the risk of investing to improve blighted areas in exchange for opportunities for major economic development, and then, after the resources were expended and the rehabilitation nearly complete, the City unilaterally restricted Plaintiff’s ability to lease to the most economically productive tenants.

2. Specifically, the Mayor, who was then widely-viewed as a front-runner for the upcoming election for governor, concluded from campaign data that his political base was hostile to large out-of-state corporations and wanted protectionist measures to shield local “mom and pop” business from competition. While Plaintiff was fulfilling its redevelopment obligations by renovating the Property and substantially contributing to the revitalization of the City’s Downtown area, the Mayor was executing on his plan to generate campaign publicity by attacking, in op-eds and interviews, “corporate giants” who compete with New Jersey’s small business owners. At the Mayor’s urging, the Council, a majority of which was filled with Fulop-loyalists, hastily drafted and adopted the protectionist ordinance to use as a political prop in Fulop’s campaign. The ordinance unilaterally altered the majority of the Redevelopment Plans—including Plaintiff’s—to

prohibit leasing to corporate chains or “formula” businesses. Despite the fact that the City sought to insert this new condition into Plaintiff’s Redevelopment Agreement, Plaintiff was not even provided notice of this drastic attempt to limit its economic rights.

3. In an attempt to evade public scrutiny, the Defendants sought to apply the formula business restrictions on soft targets unlikely to fight back, namely, property owners least likely to bear the cost of challenging the legality of the ordinances. These soft targets included only certain property owners in redevelopment areas in the downtown area. Notably absent from the restrictions are the Newport, Harborside, and Holland Tunnel areas – all of which contain numerous formula businesses.

4. Revealing just how far Fulop was willing to depart from the interest of Jersey City residents for his own personal gain, as soon as Fulop declined consideration of statewide office, he reversed his position on “formula” businesses, reasoning it would reduce the supply of investment capital in Jersey City. He attempted—unsuccessfully—to reverse the amendment to the Redevelopment Plans barring national corporate businesses from leasing in redevelopment areas, correctly observing that the City’s passage of the same ordinance he had rushed through as an instrument for his campaign was, in fact, unconstitutional. This ordinance, which even its sponsors now acknowledge to be illegal, remains on the books today.

5. Plaintiff brings this action against Defendants for violation of its constitutional rights, state law, breach of the implied covenant of good faith and fair dealing, and fundamental fairness as a result of Defendants’ unlawful restriction on interstate commerce and consequential damage to the value of the Plaintiff’s Property. The City’s after-the-fact injection of a new condition into the Redevelopment Agreement, precluding Plaintiff from entering into leases with national corporate business, has deprived Plaintiff of the benefit of its bargain with the City, and

artificially and significantly reduced the value of the Property. The ordinances were not supported by any evidence, do not support any legitimate state interest, and were solely enacted so that the Mayor could enhance his own image by protecting local businesses from competitive forces.

THE PARTIES

6. Plaintiff is a New Jersey limited liability company with its principal place of business located in Jersey City, New Jersey. Plaintiff owns the Property, which consists of sixteen (16) residential units with ground and basement level commercial space. Prior to the redevelopment of the Property, it housed the first New Jersey and New York Telephone Company switching station, first built in the late 1800s, and later served as the home of the City's Police Department.

7. Defendant City is a municipal corporation organized under the laws of the State of New Jersey and has an address of City Hall, 280 Grove Street, Jersey City, New Jersey 07302.

8. Defendant Council is the governing body of the City as organized under the laws of the State of New Jersey and has an address of City Hall, 280 Grove Street, Jersey City, New Jersey 07302.

9. Defendant Planning Board is the planning board of the City organized under the laws of the State of New Jersey and has an address of City Hall, 280 Grove Street, Jersey City, New Jersey 07302.

10. Defendant JCRA is a body corporate and politic of the City as organized under the laws of the State of New Jersey and has an address at 30 Montgomery Street, 9th Floor, Jersey City, New Jersey 07302.

JURISDICTION

11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343 (civil rights).

12. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 2201(c) and 2202.

13. The Court has jurisdiction over Plaintiff's New Jersey state law claims pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction) because the state law claims form part of the same case or controversy and are so related to the claims in the action within such original jurisdiction.

VENUE

14. Venue is proper in this District under 28 U.S.C. §§ 1391(b). Venue is proper because Defendants are located in this judicial district. Additionally, a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

BACKGROUND FACTS

a. The City Selects Plaintiff To Revitalize The Area, Which Had Fallen Into Disrepair And Had Been Designated As In Need Of Redevelopment

15. Prior to Plaintiff's efforts as redeveloper, the Property, formerly a police station, sat vacant and deteriorating.

16. On or about April 26, 2011, the Property was designated as "an area in need of redevelopment" pursuant to the New Jersey Local Housing and Redevelopment Law ("LHRL"), N.J.S.A. 40A:12A-1, et seq., by Council resolution.

17. On or about May 31, 2011, the Council adopted the 8 Erie Street Redevelopment Plan (the "Redevelopment Plan") by ordinance. The JCRA issued a Request for Proposals from potential redevelopers for projects in accordance with the Redevelopment Plan.

18. The existing Redevelopment Plan set forth no restrictions, other than those contained in the local zoning ordinances, on the corporate size or residency of potential tenants. Plaintiff was induced to apply to develop the Property because the Redevelopment Plan provided for significant potential value in leasing the renovated Property to a broad base of commercial tenants, in a market with substantial demand for renovated ground-floor spaces, including from national corporate businesses.

19. Plaintiff submitted an application and, on or about January 17, 2012, the JCRA awarded Plaintiff the designation as the redeveloper for the Property by resolution, which resolution was amended on or about March 20, 2012.

20. On or about July 20, 2012, the Plaintiff and the JCRA entered into the Redevelopment Agreement (the “Redevelopment Agreement”), which contemplated the construction and management of the Property pursuant to the existing Redevelopment Plan. Like the Redevelopment Plan, the Redevelopment Agreement did not have any restriction on renting to commercial formula business tenants.

b. Through Plaintiff’s Substantial Efforts, And Nearly \$10 Million In Investment, Plaintiff Revitalized The Area Into Modern, Attractive Retail Spaces Which Generate Significant Commercial Demand

21. As set forth in more detail below, during the execution of the Redevelopment Agreement, Plaintiff agreed to bear the risk of substantial costs and submit to an onerous regulation and approval process based on its calculation of the expected economic benefit when the project was finished and leased.

22. Pursuant to the Redevelopment Agreement, Plaintiff undertook to redevelop and convert the historic three (3) story building which formerly housed the Jersey City Police Department into approximately sixteen (16) residential rental units located on the second and third floor and commercial space on the ground floor and basement level.

23. Pursuant to the Redevelopment Agreement, Plaintiff purchased the Property for \$1,950,000 and agreed to pay all costs incurred by the JCRA in implementing the Redevelopment Agreement, including, but not limited to, (i) all costs of correcting or eliminating any objections to title, (ii) legal fees, survey costs, engineering costs, environmental costs, title search and premium fees, appraisal fees, insurance costs, and other professional fees and costs, (iii) recording fees and real estate taxes, including all taxes and dues from the JCRA, and (iv) all out-of-pocket third party costs and expenses incurred by the JCRA related to the Property, such as maintenance, repairs, and security.

24. Following its acquisition of the Property and execution of the Redevelopment Agreement, and in reliance on same, Plaintiff spent over \$7,000,000 to develop the Property, over and above the purchase price.

25. Because the Property is located in an Historic District of the City, Plaintiff was further bound by the Jersey City Land Development Ordinance, Chapter 345.71: Historic Preservation Standard, which imposes certain constraints on the Property.

26. In undertaking the rehabilitation and restoration of the Property, Plaintiff was required to take every reasonable effort to provide a use for the Property that required minimal alteration of the structure on the Property due to the Historic Preservation Standard.

27. In addition, Plaintiff was further restricted by having to ensure that all doors and entries harmonize with the doors and entries of historical significance in the surrounding environment. In the event that Plaintiff renovates the Property further, it must continue to adhere to the restrictions in the Historic Preservation Standard. While the Standard imposed many resource-intensive burdens upon Plaintiff, at the time of the Redevelopment Agreement Plaintiff

understood these requirements and was able to factor them into the economic analysis. Notably, the Standard nowhere precluded Plaintiff from leasing to “formulaic” businesses.

28. On June 19, 2015, the City issued Plaintiff a Certificate of Occupancy for the Property – after nearly three years of Plaintiff’s effort of obtaining regulatory approvals, investing in the renovation, and completing the project, in accord with Plaintiff’s commitment in the Redevelopment Agreement. Plaintiff was ready to open the doors to tenants of the Property and recoup some of its investment and hard work in helping to grow the economic prospects of the neighborhood. Notwithstanding all of Plaintiff’s efforts, the Defendants, unbeknownst to Plaintiff, adopted ordinances restricting Plaintiff’s ability to lease its commercial space to chain and franchise businesses a month before the Certificate of Occupancy was issued.

c. The Mayor Forces Through A Formula Business Restriction For Blatant Political Gain, Then Immediately Backtracks As Soon As He Withdraws From Consideration For State-Wide Office

29. What Plaintiff did not know as it was preparing to lease its newly-rehabilitated Property was that the Mayor had hurriedly forced new legislation through the City Council—with no notice to Plaintiff—that would drastically limit Plaintiff’s ability to benefit from its efforts.

30. As of early 2015, the Mayor had spent the last two years jockeying for endorsements from political leaders for a gubernatorial campaign to succeed then-Governor Chris Christie and fundraising millions of dollars for what was expected to be a contentious primary contest. In the media, he was widely viewed as the front-runner for the Democratic nomination.

31. At the time Fulop was planning entry into the election, some communities outside Jersey City, which Fulop needed for political support, favored protectionist policies for “mom and pop” stores to prevent competition from chains. Fulop pressured senior Jersey City planning officials to draft a ban on chain stores, which he could use as a political prop to sell state-wide voters on his candidacy. When City officials began reviewing the issue, particularly in light of

successful legal challenges to such provisions, Fulop demanded they stop delaying and strong-armed them into hastily drafting an ordinance for his review.

32. The Planning Department believed that restricting formula businesses in the City's downtown area was unnecessary as the area was not facing an influx of chain stores or franchise stores nor was the community's character in any way threatened. Indeed, all the development and redevelopment in the downtown area had been focused on making the area more business and investment friendly. They did not believe the rush to draft the ordinance without the proper review, simply to benefit Fulop's state-wide political ambitions, was in the best interests of the City's development needs.

33. Upon information and belief, the Council, pursuant to N.J.S.A. 40:55D-64, sought the recommendation of the Planning Board related to the inclusion of a definition for "formula businesses" in the Land Development Ordinance, Chapter 345 of the Code of the City of Jersey City (the "Land Development Ordinance").

34. On April 7, 2015, the Planning Board voted to recommend that the Council amend the Definitions of the Land Development Ordinance to add a definition for "formula businesses." The Planning Board made its recommendation solely at the insistence of the Mayor and did not otherwise engage in any meaningful or substantive review as to whether such an amendment should be recommended to the Council. Indeed, in its haste to appease the Mayor and acquiesce to his demands, the Planning Board did not conduct, commission, or otherwise complete any studies, reports, examinations, or surveys that supported the inclusion of a definition for formula business in the Land Ordinance.

35. Notwithstanding the Planning Department's disagreement over the need for a formula business restriction, the Mayor's office, exerting its political influence, forced the

Planning Department to draft a formula business definition to be included in the City's Land Ordinance and subsequently inserted as a restriction on certain redevelopment plans. Such "formula business" restrictions would effectively bar national chain stores and franchises from operating in Jersey City in designated areas with the purpose and effect of protecting local business and deter formula businesses from conducting business in Jersey City. These actions by the Mayor, pushed by his public relations representatives, were engaged in for political purposes in an effort to prop up his nascent efforts to run for Governor.

36. In order to accomplish the Mayor's demand, the Defendants structured the restriction on formula businesses in such a manner that it would focus on soft targets, which would be property owners in the downtown area that were subject to redevelopment plans. The Defendants, knowing that the public would not support such restrictions, engaged in legislative maneuvering whereby they would enact two separate ordinances that would serve a singular purpose – to restrict formula businesses. This structure allowed the Defendants to avoid giving personal notice to any of the property owners affected, ensuring that opposition would be limited.

37. The Mayor's demand for formula business restrictions lacked any rational basis to the needs of the City. Instead, the desired formula business restriction was designed solely as a publicity stunt to gain the Mayor media coverage as he contemplated running for Governor.

38. Tellingly, once the Mayor announced that he would not run for Governor, he made an abrupt pivot and spearheaded an effort to repeal the formula business restrictions because it would diminish investment in the City. By 2017, Fulop was asserting that the very same ordinance he had demanded be drafted immediately without full planning review was, in fact, adopted in a procedurally defective manner and unable to withstand constitutional challenge.

39. The Council declined to vote to repeal the restrictions in 2017, acknowledging the constitutional vulnerability, but leaving it for the courts to decide whether the restriction is legal and expressing its intent that the ordinances remain to protect the local “mom and pop” stores.

d. The City Adopts Ordinances Unilaterally Altering Plaintiff’s Redevelopment Agreement, Injecting New Conditions Into The Contract That Illegally Restricted The Benefit Of Plaintiff’s Bargain

40. The Defendants first adopted City Ordinance 15.052 Defining “formula Businesses.” The definition of “formula business” (adopted by the Council in Ordinance 15.052) states:

A type of business establishment that is contractually obligated to maintain two or more standardized characteristics such as: array of merchandise, menu items, façade design, décor, color scheme, uniform apparel, signage, trademark, or servicemark; and where 10 or more other establishments that are similarly contractually obligated to the same corporate entity are in operation within 300 miles of Jersey City.

- (1) Standardized array of merchandise and menu items shall be defined as 50% or more of items from a single distributor bearing uniform markings.
- (2) Trademark and Servicemark shall be defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods or service from one party from those of others.
- (3) Décor shall be defined as the style of interior furnishings, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.
- (4) Color Scheme shall be defined as selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the façade.
- (5) Uniform Apparel shall be defined as standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags) as well as standardized colors of clothing.

41. The Planning Board’s recommendation to include a definition for formula businesses in the Land Ordinance was the first step in the ultimate goal of restricting formula businesses in certain soft targets in the downtown area.

42. On May 13, 2015, the Council, rubber stamping the Planning Board's recommendation, adopted City Ordinance 15.052, titled "Ordinance of the Municipal Council of the City of Jersey City Adopting an Amendment to the Land Development Ordinance Adding a Definition for Formula Businesses" ("Ordinance 15.052").

43. While Ordinance 15.052 was purportedly adopted because formula businesses "may detract from established community character and instill a sense of sameness to [Jersey City's] commercial areas causing neighborhoods to feel less unique," the actual purpose was to restrict "formula businesses" in various downtown redevelopment plans to protect local businesses from economic competition, particularly from out-of-state corporations.

44. The Council did not rely on any studies, reports, examinations, or surveys in its adoption of Ordinance 15.052.

45. Plaintiff did not receive any personal notice of the hearings for Ordinance 15.052.

46. The Council next adopted City Ordinance 15.053 to amend certain Redevelopment Plans to add formula business restrictions.

47. Upon information and belief, the Council, pursuant to N.J.S.A. 40:55D-64, sought the recommendation of the Planning Board related to the inclusion of a definition for "formula businesses" in the Land Development Ordinance.

48. On April 7, 2015, again at the demand of the Mayor, the Planning Board voted to recommend that the Council amend certain redevelopment plans to add restrictions for "formula businesses."

49. The proposed restriction, which would be adopted in Ordinance 15.053, inserted the following language into the permitted uses sections of certain Redevelopment Plans, including, but not limited to, 8 Erie Redevelopment Plan, which includes Plaintiff's Property:

All commercial retail areas within each structure or within a single tax lot shall limit formula business establishments, as defined by the Land Development Ordinance, to a maximum of 30% of ground floor gross leasable commercial area. For the purposes of this area restriction, the formula business definition shall apply to the following uses, whether functioning as a principal or accessory use:

1. Retail sales of goods and services.
2. Restaurants, all categories.
3. Bars.
4. Financial service facilities and banks.

Grocery stores greater than 15,000 square feet may exceed 30% of gross leasable commercial area, but shall be the only formula business within such structure or lot.

50. During the hearing before the Planning Board on April 7, 2015, planning board officials stated that the restriction on formula businesses contained in Ordinance 15.053 would only affect certain redevelopment areas downtown and “the neighborhood-commercial district is unaffected and any other regular zone district that permits retail is unaffected.”

51. Further, it was admitted that the formula business restriction only applies to essentially soft targets located in the downtown area. In fact, the restriction was so arbitrary that it applied to certain sides of a street, but not the other.

52. The formula business restriction was designed specifically to “provide for a little extra room for nonformula business, sort of more local, kind of one-off business to find space in Jersey City.”

53. In voting in favor of the restriction of formula business, the Planning Board wanted to “protect[] some of the neighborhoods within Jersey City and keep them, all local people, to do things.”

54. The Planning Board recommended the adoption of “formula business” restrictions for certain downtown redevelopment areas solely at the request of the Mayor and did not otherwise engage in any meaningful or substantive review as to whether such an amendment should be recommended to the Council.

55. No studies, reports, examinations, or surveys were completed that support the restriction of formula businesses in certain redevelopment plans. Instead, the restrictions were proposed on certain redevelopment plans because the Defendants viewed these areas as the softest targets. The formula business restriction was intentionally left out of other redevelopment plans in areas the Defendants knew would challenge it, such as the Newport, Harborside, and Holland Tunnel areas.

56. On May 13, 2015, the Council adopted City Ordinance 15.053, titled “Ordinance of the Municipal Council of the City of Jersey City Adopting Amendments to Various Redevelopment Plans to Add Formula Business Restrictions” (“Ordinance 15.053”).

57. During the hearing before the Council on May 13, 2015, not a single member of the public spoke in favor of the proposed restriction of formula businesses.

58. The Council did not rely on any studies, reports, examinations, or surveys in the adoption of Ordinance 15.053.

59. The primary purpose in adopting Ordinance 15.053 was to protect local businesses and to provide publicity to the Mayor who was considering running for Governor of New Jersey.

60. Ordinance 15.053 was further adopted to provide publicity to the Mayor, who was considering running for Governor at the time the ordinance was passed.

61. Plaintiff did not receive any personal notice of any hearings regarding Ordinance 15.053.

e. Ordinance 15.053 Has Been Selectively Applied To Plaintiff's Detriment.

62. In or around early 2017, the City permitted a formula business donut shop to open in redevelopment area that was subject to the formula business restrictions contained in Ordinance 15.053.

63. Notwithstanding the fact that the donut shop fit every criteria for a formula business in Ordinance 15.052 and Ordinance 15.053, the Defendants permitted the donut shop to open because it was labelled as operating as a factory.

64. Ordinance 15.053 does not exclude formula business that operate as a factory.

65. The Defendants have selectively enforced the formula business restriction for their own benefit and to Plaintiff's detriment.

f. Plaintiff Has Been Prohibited From Leasing Commercial Space To Ready, Willing, And Able Tenants Because Of Ordinance 15.053.

66. Plaintiff owns the Property, which includes ground floor, commercial retail space.

67. Currently, Plaintiff has sought out and obtained an economically advantageous proposal from a prospective formula business tenant.

68. The prospective tenant is, pursuant to Ordinance 15.053, defined as a formula business and is thus prohibited from leasing Plaintiff's Property.

69. The prospective commercial tenant would be the first and only formula business of its name in Jersey City.

70. To date, no other prospective commercial tenant has made an offer to rent Plaintiff's Property.

71. Further, the value of Plaintiff's Property has been significantly reduced by Ordinance 15.052 and Ordinance 15.053.

COUNT I
42 U.S.C. § 1983

VIOLATION OF THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION

72. Plaintiff repeats and reiterates each of the aforesaid allegations as if set forth verbatim herein.

73. 42 U.S.C. § 1983, provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

74. Article I, Section 8, Clause 3 of the United States Constitution states: "[The Congress shall have Power] To regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes."

75. The Defendants, in adopting Ordinance 15.052 and Ordinance 15.053, have unconstitutionally discriminated against interstate commerce by severely limiting or effectively prohibiting formula businesses from operating within certain Redevelopment Plans in downtown Jersey City.

76. The Defendants adopted Ordinance 15.052 and Ordinance 15.053 for the purpose of favoring in-state economic interests over out-of-state interests and as a means of economic protectionism.

77. Because Ordinance 15.052 and Ordinance 15.053 discriminate against interstate commerce on their face and/or have the direct effect of discriminating against interstate commerce, they are "per se" invalid and must be reviewed under strict scrutiny.

78. Alternatively, even if not facially discriminatory, Ordinance 15.052 and Ordinance 15.053 have the effect of disproportionately burdening interstate commerce for the benefit of local, intrastate businesses.

79. As a direct and proximate cause of Defendants' violation of Article I, Section 8, Clause 3 of the United States Constitution, Plaintiff has suffered, and will continue to suffer, damages.

WHEREFORE, Plaintiff demands Judgment against Defendants in Plaintiff's favor for the following relief:

- A. Declaring that Ordinance 15.052 and Ordinance 15.053 are unconstitutional and are of no force or effect;
- B. Compensatory damages;
- C. Attorneys' fees and costs of suit;
- D. Interest;
- E. Punitive damages;
- F. Such other and further relief as the Court may deem equitable and just.

COUNT II
42 U.S.C. § 1983

VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

80. Plaintiff repeats and reiterates each of the aforesaid allegations as if set forth verbatim herein.

81. 42 U.S.C. § 1983, provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in

equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

82. Amendment XIV to the Constitution of the United States provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

83. Defendants have denied Plaintiff the equal protection of the law to which they are entitled.

84. Ordinance 15.052 and Ordinance 15.053 are arbitrary, capricious, and unreasonable as they lack a substantial relationship to a legitimate goal to be accomplished.

85. Defendants cannot establish a rational basis for allowing locally-owned stores to operate unrestricted in certain Redevelopment Plans but prohibit and/or limit formula businesses to uneconomic sizes.

86. The purpose and ultimate effect of Ordinance 15.052 and Ordinance 15.053 are economic protectionism.

87. Indeed, various formula businesses already occupy the City's downtown area.

88. In fact, in or around early 2017, the city permitted a formula business donut shop to open in a restricted area for no reason other than that the city sought to selectively enforce Ordinance 15.052 and Ordinance 15.053.

89. Defendants' selective enforcement of Ordinance 15.052 and Ordinance 15.053 between similarly situated individuals, namely property owners seeking to rent commercial space to formula businesses, follows no justifiable standard.

90. As a direct and proximate cause of Defendants' violation of Plaintiff's civil rights, Plaintiff has suffered, and will continue to suffer, damages.

91. Pursuant to 42 U.S.C. § 1988, in this action to enforce a provision of 42 U.S.C. § 1983, Plaintiff is entitled to a reasonable attorneys' fee, costs, and fees in connection with the retention of expert witnesses.

WHEREFORE, Plaintiff demands Judgment against Defendants in Plaintiff's favor for the following relief:

- A. Declaring that Ordinance 15.052 and Ordinance 15.053 are unconstitutional and are of no force or effect;
- B. Compensatory damages;
- C. Attorneys' fees and costs of suit;
- D. Interest;
- E. Punitive damages;
- F. Such other and further relief as the Court may deem equitable and just.

COUNT III
VIOLATION OF N.J.S.A. 40:55D-62.1

92. Plaintiff repeats and reiterates each of the aforesaid allegations as if set forth verbatim herein.

93. Pursuant to N.J.S.A. 40:55D-62.1, the City is obligated to provide notice of a hearing on an "amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district" with such notice given at least ten (10) days prior to the hearing by the municipal clerk to, *inter alia*, all owners of real property located within the proposed zoning change.

94. Pursuant to N.J.S.A. 40:55D-62.1, notices required under this provision must be served on the property owner or mailed by certified and regular mail.

95. The Redevelopment Plan, and any amendments thereto, is the zoning for the Property and therefore the adoption of the Ordinance 15.052 and Ordinance 15.053 should be in accordance with the requirements of N.J.S.A. 40:55D-62.1.

96. The Defendants adopted Ordinance 15.052 and Ordinance 15.053 in a concerted and intentional effort to circumvent the notice requirements under the applicable statute.

97. Ordinance 15.052 and Ordinance 15.053, when read together, effectively resulted in a zoning change that necessitated individual notice to all property owners of the affected areas, including Plaintiff.

98. Plaintiff did not receive any notice of the hearings related to Ordinance 15.052 or Ordinance 15.053.

99. As a result of Defendants intentional actions to avoid giving individual notice to property owners in the areas affected by Ordinance 15.052 and Ordinance 15.053, Plaintiff has been deprived of its right to due process.

WHEREFORE, Plaintiff demands Judgment against Defendants in Plaintiff's favor for the following relief:

- A. Declaring that Ordinance 15.052 and Ordinance 15.053 are unconstitutional and are of no force or effect;
- B. Compensatory damages;
- C. Attorneys' fees and costs of suit;
- D. Interest;
- E. Punitive damages;

F. Such other and further relief as the Court may deem equitable and just.

COUNT IV
INVALID ZONING ORDINANCE

100. Plaintiff repeats and reiterates each of the aforesaid allegations as if set forth verbatim herein.

101. The alleged purpose of Ordinance 15.052 and Ordinance 15.053 is to protect the uniqueness of the City's downtown area by restricting and/or prohibiting formula businesses.

102. Defendants adoption of Ordinance 15.052 and Ordinance 15.053 lacks a substantial relation to the object being sought to be attained as numerous formula businesses already operate in the City's downtown neighborhood.

103. In fact, in or around early 2017, the city permitted a formula business donut shop to open in a restricted area for no reason other than the city sought to selectively enforce Ordinance 15.052 and Ordinance 15.053.

104. Ordinance 15.052 and Ordinance 15.053 are not reasonably calculated to protect the "uniqueness" of the City's downtown neighborhood under the circumstances as it ignores previously established formula businesses and provides no substantiation as to how formula businesses negatively impact the City's downtown area.

105. Because of the Defendants' arbitrary, capricious, and unreasonable act in adopting Ordinance 15.052 and Ordinance 15.053, Plaintiff has suffered, and will continue to suffer, damages.

WHEREFORE, Plaintiff demands Judgment against Defendants in Plaintiff's favor for the following relief:

A. Declaring that Ordinance 15.052 and Ordinance 15.053 are unconstitutional and are of no force or effect;

- B. Compensatory damages;
- C. Attorneys' fees and costs of suit;
- D. Interest;
- E. Punitive damages;
- F. Such other and further relief as the Court may deem equitable and just.

COUNT V
VIOLATION OF DOCTRINE OF FUNDAMENTAL FAIRNESS

106. Plaintiff repeats and reiterates each of the aforesaid allegations as if set forth verbatim herein.

107. New Jersey's doctrine of fundamental fairness serves to protect citizens generally against unjust and arbitrary governmental action, and specifically against governmental procedures that tend to operate arbitrarily.

108. The doctrine of fundamental fairness is an augmentation of existing constitutional protections or as an independent source of protection against state action.

109. The Council's adoption of Ordinance 15.052 and Ordinance 15.053 was premised on a desire by the Mayor to gain publicity for a possible run for Governor and has no rational basis in the actual needs of Jersey City.

110. Further, these Ordinances operate to effectively oppress and deprive Plaintiff of its ability to rent its Property to commercial tenants that qualify as formula businesses.

111. Further, the Defendant's intentional structuring of Ordinance 15.052 and Ordinance 15.053 was designed to deny Plaintiff due process as it permitted Defendants to arbitrarily change the zoning of Plaintiff's Property without giving proper notice.

112. Because of the Defendants' arbitrary, capricious, and unreasonable act in adopting Ordinance 15.053, Plaintiff has suffered, and will continue to suffer, damages.

WHEREFORE, Plaintiff demands Judgment against Defendants in Plaintiff's favor for the following relief:

- A. Declaring that Ordinance 15.052 and Ordinance 15.053 are unconstitutional and are of no force or effect;
- B. Compensatory damages;
- C. Attorneys' fees and costs of suit;
- D. Interest;
- E. Punitive damages;
- F. Such other and further relief as the Court may deem equitable and just.

COUNT VI

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

113. Plaintiff repeats and reiterates each of the aforesaid allegations as if set forth verbatim herein.

114. As the Redevelopment Agreement constitutes a valid and enforceable agreement with Plaintiff, the City possesses a duty of good faith and fair dealing with respect to Plaintiff as to all matters relating thereto.

115. City's actions in adopting Ordinance 15.052 and Ordinance 15.053, without giving Plaintiff proper notice of the hearings related to the same, and knowing that these Ordinances would severely prejudice Plaintiff's ability to rent commercial space in his Property, constitutes a breach of the implied covenant of good faith and fair dealing with respect to Plaintiff.

116. Plaintiff has been deprived of the benefit of its bargain with the City as a result of the breach. Specifically, as a result of the actions of the City, Plaintiff will be unable to rent

commercial space in the Property to any tenant that qualifies as a formula business, and unless injunctive relief is granted, Plaintiff also will lose a current prospective tenant that would qualify as a formula business.

117. As a direct and proximate result of the City's breach of the implied covenant of good faith and fair dealing, Plaintiff has incurred, and continues to incur, damages.

WHEREFORE, Plaintiff demands Judgment against Defendants in Plaintiff's favor for the following relief:

- A. Declaring that Ordinance 15.052 and Ordinance 15.053 are unconstitutional and are of no force or effect;
- B. Compensatory damages;
- C. Attorneys' fees and costs of suit;
- D. Interest;
- E. Punitive damages;
- F. Such other and further relief as the Court may deem equitable and just.

COUNT VII
DECLARATORY AND INJUNCTIVE RELIEF

118. Plaintiff repeats and reiterates each of the aforesaid allegations as if set forth verbatim herein.

119. Plaintiff brings this Count pursuant to 28 U.S.C. §§ 2201(a) and 2202 and Fed. R. Civ. P. 57 for a declaratory judgment declaring and adjudging the rights and liabilities of the parties with respect to the claims and controversies between and among the parties as set forth herein. Pursuant to Fed. R. Civ. P. 65, Plaintiff also seeks entry of preliminary and permanent injunctive relief to prevent it from suffering immediate and irreparable harm.

120. An actual controversy exists between the parties with respect to the validity and enforceability of Ordinance 15.052 and Ordinance 15.053.

121. Ordinance 15.052 and Ordinance 15.053 are invalid as they violate the U.S. Constitution and/or State statutory law and was an arbitrary, capricious, and unreasonable zoning ordinance.

122. Plaintiff is unable to engage prospective commercial tenants because of the illegal restrictions imposed by Ordinance 15.052 and Ordinance 15.053, thus hindering its ability to utilize its Property completely.

123. Moreover, the City's unilateral adoption of an ordinance impairing Plaintiff's existing contract rights with the City violated the Contracts Clause of the United States Constitution. The City's action constitute a substantial impairment of the contractual relation because it thwarted the contracting parties' legitimate contractual expectations, including the central benefit of Plaintiff's bargain: to offer renovated space to corporate tenants at a rate commensurate to the demand for the premises.

124. The rationale for the state action was Fulop's personal political benefit, not any legitimate public purpose. The impairment was neither reasonable nor necessary to further any important public interest.

125. Plaintiff has no adequate remedy other than this action in order to avoid Defendants' unlawful discriminatory application of Ordinance 15.052 and Ordinance 15.053 to similarly-situated persons.

126. Plaintiff will suffer immediate and irreparable harm if Ordinance 15.052 and Ordinance 15.053 is not promptly declared invalid.

WHEREFORE, Plaintiff demands Judgment against Defendants in Plaintiff's favor for the following relief:

- A. Declaring Ordinance 15.052 and Ordinance 15.053 are unconstitutional and are of no force or effect;
- B. A preliminary and permanent injunction prohibiting the Defendants from enforcement of Ordinance 15.052 and Ordinance 15.053;
- C. Costs; and
- D. Such other and further relief as the Court may deem equitable and just.

Dated: April 5, 2019

SILLS CUMMIS & GROSS P.C.

By: *s/Joseph B. Fiorenzo*
JOSEPH B. FIORENZO
One Riverfront Plaza
Newark, New Jersey 07102-5400
(973) 643-7000
Attorneys for Plaintiff

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury as to all issues so triable in this action.

Dated: April 5, 2019

SILLS CUMMIS & GROSS P.C.

By: *s/Joseph B. Fiorenzo*
JOSEPH B. FIORENZO
One Riverfront Plaza
Newark, New Jersey 07102-5400
(973) 643-7000
Attorneys for Plaintiff

LOCAL CIVIL RULE 11.2 CERTIFICATION

I, counsel of record for Plaintiff in the above-referenced matter, hereby certify that the matter in controversy is not the subject of any other action pending in any court, or any pending arbitration or administrative proceeding.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 5, 2019

SILLS CUMMIS & GROSS P.C.

By: s/Joseph B. Fiorenzo
JOSEPH B. FIORENZO
One Riverfront Plaza
Newark, New Jersey 07102-5400
(973) 643-7000
Attorneys for Plaintiff

CERTIFICATION OF NONARBITRABILITY

PURSUANT TO LOCAL RULE 201.1(d)

I, counsel of record for Plaintiff in the above-referenced matter, hereby certify that the relief requested in this matter includes non-monetary relief, and the damages potentially recoverable in this matter exceed the sum of \$150,000, exclusive of interest and costs and of any claim for punitive damages. Accordingly, Local Rule 201.1(d) does not apply to this matter.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 5, 2019

SILLS CUMMIS & GROSS P.C.

By: s/Joseph B. Fiorenzo
JOSEPH B. FIORENZO
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